



LEGAL AFFAIRS
1625 NORTH MARKET BLVD., SUITE S 309
SACRAMENTO, CA 95834



Legal Guide P-2

PRIVACY RIGHTS: PAYMENT BY CHECK OR CREDIT CARD

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Two laws help protect the privacy of consumers who make payment by check or credit card.

Payment by Check

1. Overview of the Law. This law¹ applies to any person or business which accepts a check or other negotiable instrument as payment for goods or services sold or leased to a consumer at retail, for use by the consumer and not for resale. For convenience, this Legal Guide calls such a person or business a "retailer." The law limits the extent to which a retailer can rely on a credit card for any purpose, but it also provides important exceptions to accommodate the legitimate needs of check writers and retailers.

Nothing in this law requires a retailer to accept a check, whether or not a credit card is presented.

2. Prohibited Conduct. Except as in items 3 and 4, below, a retailer who receives a check as payment for goods or services cannot do any of the following:

- Require the check writer to provide a credit card as a condition of accepting the check.
- Require the check writer, as a condition of accepting the check, to authorize the merchant to charge the check writer's credit card account if the check bounces.
- Record the number of a credit card in connection with any part of the transaction.
- Contact the check writer's credit card issuer to determine if he or she has sufficient credit available to cover the amount of the check.

3. Allowable Conduct in Typical Purchase Situations. A retailer who receives a check in a typical retail purchase situation can do any of the following:

- Require the production of a check guarantee card, even if the check guarantee card is also a credit card.
- Require, verify and record the check writer's name, address and telephone number.
- Require the check writer, as a condition of accepting the check, to produce "reasonable forms of positive identification" other than a credit card. This includes a driver's license or California identification card, or where neither of these is available, another form of photo identification. Presumably, the retailer may record the kind of identification and its number.
- Request but not require the voluntary production of a credit card for identification or as an indication of credit standing, provided that:

-The only information that is recorded is the type of credit card (e.g., "Visa"), the name of the card issuer, and the date the card expires; and

-The retailer informs the customer, in either of the following ways, that displaying a credit card is not a requirement for check writing:

By posting a conspicuous and unobstructed notice stating, "Check Writing ID: credit card may be requested but not required for purchase," or

By training and requiring its sales clerks who request credit cards to inform all check writing customers that they are not required to display a credit card to write a check.

4. Special Situations. The law makes allowances for the following special situations:

- Cash Back: A person or business may request the production of a credit card, or record the credit card

number, if the check is given solely in exchange for cash (but not if it is given also as payment for goods or services).

- Deposit: A person or business may request, receive or record a credit card number, in lieu of requiring a deposit to secure payment in the event of default, loss, damage, or other occurrence; for instance, where --

A hotel or motel requires a credit card number to secure a room reservation, or

A tool rental agency requires a credit card number to secure the return of a rented item, or

A video rental shop requires a credit card number to secure return of rented tapes.

- As Payment: A person or business may request or record a credit card number on a check which is accepted as a payment on that credit account.

Payment by Credit Card

1. Overview of the Law. This law² applies to any person or business which accepts credit cards for the transaction of business. For convenience, this Legal Guide calls such a person or business a "seller." Essentially, the law requires that a seller who accepts a credit card rely solely on the credit card and the card issuer's system of identifying the cardholder. In the eyes of the law, the card itself provides all the information that is needed to process the transaction. However, the law includes several exceptions designed to meet the legitimate needs of card issuers, cardholders and sellers.

2. Prohibited Conduct. Except as in items 3 and 4, below, a seller who accepts payment by credit card for goods or services cannot do any of the following:

- Request or require, as a condition of accepting the credit card, that the cardholder provide personal identification information which the seller or the cardholder writes on the credit card slip or anywhere else. "Personal identification information" includes, but is not limited to, the cardholder's address or telephone number.
- Use a credit card form that contains preprinted spaces designated for filling in personal identification information about the cardholder.

3. Allowable Conduct in Typical Situations. A seller who accepts payment by credit card for goods or services can do

any of the following:

- Require the cardholder, as a condition of accepting the credit card, to provide "reasonable forms of positive identification." This includes a drivers license or a California identification card, or where neither of these is available, another form of photo identification. However, none of the information from such identification can be recorded on the credit card slip or anywhere else.

-Exception: If the cardholder pays for the transaction with a credit card number and does not make the credit card available upon request to verify the number, the seller can record the cardholder's drivers license or identification card number on the credit card slip or otherwise.

- Imprint or otherwise record the information that appears on the credit card, such as the cardholders' name and the number and expiration date of the card.

4. Special Situations. The law recognizes that exceptions to the foregoing rules are necessary in limited situations:

- Deposit: A seller may require and record personal identification information when the credit card is used as a deposit to secure payment in the event of default, loss, damage, or other similar occurrence.
- Cash Advance: A person or business may require and record personal identification information, including the cardholder's address and telephone number, when a credit card is used to obtain a cash advance.
- Contractual Obligation: A seller may record personal identification information which the seller is contractually obligated by the card issuer to provide in order to complete the credit card transaction, or which the seller is required by federal law or regulation to collect and record.
- Service, Delivery, etc.: A seller may record personal identification information required for a special purpose incidental but related to the individual credit card transaction, such as information relating to shipping, delivery, servicing or installation of the purchased merchandise, or information that is needed to fill a special order.

Enforcement Provisions

The laws on payment by check and payment by credit card contain identical enforcement provisions, as follows:

- Any person or business which violates the law is subject to a civil penalty of not more than \$250 for a first violation or \$1,000 for each subsequent violation, in a civil action brought by the consumer, the Attorney General, the district attorney or the city attorney.
- No penalty may be assessed, however, if the person or business demonstrates that the violation was unintentional and resulted from a bona fide error, and if reasonable procedures were maintained to avoid such an error.
- The Attorney General or any district attorney or city attorney also can maintain civil enforcement actions, including actions to enjoin violations, and to recover the enforcement costs.

NOTICE: We attempt to make our legal guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

Endnotes

1. Civil Code section 1725 (AB 2880 (Areias), Stats. 1990, ch. 637; AB 1477 (Areias), Stats. 1991, ch. 1089); and, AB 1316 (Bustamante), Stats. 1995, ch.458.
2. Civil Code section 1747.8 (AB 2920 (Areias), Stats. 1990, ch. 999; AB 1477 (Areias), Stats. 1991, ch. 1089); and, AB 1316 (Bustamante), Stats. 1995, ch.458.

Prepared by:

Supervising Attorney
Legal Services Unit
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